IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WA.No. 1351 of 2003(A)

AGAINST JUDGMENT DATED 26.2.2003 IN O.P.NO.4578 OF 1992

APPELLANTS/PETITIONERS IN O.P.
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1. S. SIDHARTHAN, SIDHARTHA SADANAM,
GANAPATHIYAN KUZHY, ARYANADU VILLAGE,
NEDUMANGADU TALUK, THIRUVANANTHAPURAM DISTRICT.

2. DEVAMMA, D/O. K. GANGADHARA PANICKER,
KATTACKAL VEEDU, GANAPATHIYAN KUZHY,
ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

3. VAMADEVAN, S/O. K. GANGADHARA PANAICKER
KATTACKAL VEEDU, GANAPATHIYAN KUZHY,
ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

4. PRAMACHANDRAN, S/O. K. GANGADHARA
PANICKER, KATTACKAL VEEDU, GANAPATHIYAN KUZHY,
ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

5. VALSALA, D/O. K. GANGADHARA PANICKER,
KATTACKAL VEEDU, GANAPATHIYAN KUZHY,
ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

6. PUSHKARAN, S/O. K. GANGADHARA PANICKER
KATTACKAL VEEDU, GANAPATHIYAN KUZHY,
ARYANADU VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.P.V.BABY

RESPONDENTS/RESPONDENTS IN O.P.
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1. THE ARYANADU SERVICE CO-OPERATIVE
BANK LTD.NO.593, REPRESENTED BY ITS
SECRETARY, ARYANADU.

2. INSPECTOR OF CO-OPERATIVE SOCIETIES
OFFICE OF THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (G), NEDUMANGADU.

3. THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

R2 & R3 BY SPECIAL GOVERNMENT PLEADER SMT.A.G.ANEETHA
SRI.G.UNNIKRISHNAN
SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1351 of 2003

Dated, this the 28th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

The issue in this writ appeal lies in a very narrow compass.

2. The appellants being aggrieved by the orders passed by the learned Single Judge in O.P.No.4578 of 1992 dated 26th February, 2003 are before us in this appeal.

3. Late K.Gangadhara Panicker was the surety when one Sidharthan was appointed as the Salesman in the first respondent Co-operative Bank. There was defalcation of certain amounts of the Bank. Therefore, the Bank had initiated Section 69 proceedings under the provisions of the Kerala Co-operative Societies Act. The Arbitrator after considering the entire evidence that has been brought on record has come to the conclusion that it is Sidharthan alone who was responsible for the defalcation of the amounts of the Co-operative Bank. Since late Gangadhara Panicker was the surety, the liability was also fastened on him. Aggrieved by the award so passed by the Arbitrator, Sidharthan as well as Gangadhara Panicker had filed appeal before the appellate authority. The appellate authority is not only the fact finding authority but also entrusted to decide the question of law. The said authority after considering the congent evidence on record has once again come to the conclusion that it is Sidharthan alone who is responsible for the defalcation of the amounts of the respondent Bank.

4. Aggrieved by the said order, Sidharthan and others were before this Court in O.P.No.4578 of 1992. The learned Single Judge has rejected the writ petition.

5. In matters of this nature judicial review is permissible only to the extent that in the decision making process if there is any irregularity. The petitioners have failed to bring to the notice of the learned Judge any procedural irregularity committed either by the Arbitrator or by the Tribunal. The learned Judge keeping in view that the writ court cannot be functioning as an appeal court, has rejected the writ petition, since the findings of the Arbitrator and the Tribunal were pure findings of fact.

6. Keeping all these aspects in view, the learned Single Judge has rejected the writ petition.

7. We have gone through the orders passed by the learned Single Judge. As we have already stated, the learned Single Judge keeping in view the powers of the judicial review has rightly not interfered with the findings of fact arrived at by the Arbitrator as well as the Tribunal. In that view of the matter, we do not find any error in the order passed by the learned Single Judge which would call for our interference. Therefore, the writ appeal requires to be rejected and it is rejected.

8. We are informed by the learned counsel for the appellants that some liberty is reserved to the appellants to proceed against the President and

committee members of the respondent Bank for realisation of the amounts said to have been suffered by the appellants. That liberty we do not intend to interfere with.

Consequently, C.M.P.No.1363 of 2003 is also dismissed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns